

ALASKA STATE LEGISLATURE
HOUSE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE

April 27, 2021

3:02 p.m.

DRAFT

MEMBERS PRESENT

Representative Liz Snyder, Co-Chair
Representative Tiffany Zulkosky, Co-Chair
Representative Ivy Spohnholz
Representative Zack Fields
Representative Ken McCarty
Representative Mike Prax
Representative Christopher Kurka

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 116

"An Act relating to care of juveniles and to juvenile justice; relating to employment of juvenile probation officers by the Department of Health and Social Services; relating to terms used in juvenile justice; relating to mandatory reporters of child abuse or neglect; relating to sexual assault in the third degree; relating to sexual assault in the fourth degree; repealing a requirement for administrative revocation of a minor's driver's license, permit, privilege to drive, or privilege to obtain a license for consumption or possession of alcohol or drugs; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 105

"An Act relating to the duties of the commissioner of corrections; relating to the detention of minors; relating to minors subject to adult courts; relating to the placement of minors in adult correctional facilities; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 184

"An Act requiring state participation in a tribal child welfare compact."

- MOVED HB 184 OUT OF COMMITTEE

HOUSE BILL NO. 106

"An Act relating to missing persons under 21 years of age."

- HEARD & HELD

CS FOR SENATE BILL NO. 65(JUD)

"An Act relating to immunity for consulting physicians, podiatrists, osteopaths, advanced practice registered nurses, physician assistants, chiropractors, dentists, optometrists, and pharmacists."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 116

SHORT TITLE: JUVENILES: JUSTICE, FACILITES, TREATMENT

SPONSOR(S): REPRESENTATIVE(S) SPOHNHOLZ

02/24/21	(H)	READ THE FIRST TIME - REFERRALS
02/24/21	(H)	HSS, JUD
04/09/21	(H)	HSS REFERRAL MOVED TO AFTER JUD
04/09/21	(H)	BILL REPRINTED
04/12/21	(H)	JUD AT 1:00 PM GRUENBERG 120
04/12/21	(H)	Heard & Held
04/12/21	(H)	MINUTE(JUD)
04/14/21	(H)	JUD AT 1:00 PM GRUENBERG 120
04/14/21	(H)	Heard & Held
04/14/21	(H)	MINUTE(JUD)
04/16/21	(H)	JUD AT 1:00 PM GRUENBERG 120
04/16/21	(H)	Moved HB 116 Out of Committee
04/16/21	(H)	MINUTE(JUD)
04/19/21	(H)	JUD RPT 3DP 3AM
04/19/21	(H)	DP: DRUMMOND, SNYDER, CLAMAN
04/19/21	(H)	AM: EASTMAN, VANCE, KURKA
04/27/21	(H)	HSS AT 3:00 PM DAVIS 106

BILL: HB 105

SHORT TITLE: DETENTION OF MINORS

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/19/21	(H)	READ THE FIRST TIME - REFERRALS
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02/19/21	(H)	JUD, HSS
03/05/21	(H)	JUD AT 1:30 PM GRUENBERG 120
03/05/21	(H)	Heard & Held
03/05/21	(H)	MINUTE(JUD)
03/08/21	(H)	JUD AT 1:30 PM GRUENBERG 120
03/08/21	(H)	<Bill Hearing Canceled>
03/10/21	(H)	JUD AT 1:30 PM GRUENBERG 120
03/10/21	(H)	Moved CSHB 105(JUD) Out of Committee
03/10/21	(H)	MINUTE(JUD)
03/12/21	(H)	JUD RPT CS(JUD) 4DP 3NR
03/12/21	(H)	DP: DRUMMOND, SNYDER, KREISS-TOMKINS, CLAMAN
03/12/21	(H)	NR: EASTMAN, VANCE, KURKA
04/15/21	(H)	HSS AT 3:00 PM DAVIS 106
04/15/21	(H)	Heard & Held
04/15/21	(H)	MINUTE(HSS)
04/27/21	(H)	HSS AT 3:00 PM DAVIS 106

BILL: HB 184

SHORT TITLE: REQUIRE TRIBAL CHILD WELFARE COMPACT

SPONSOR(s): ZULKOSKY

04/21/21	(H)	READ THE FIRST TIME - REFERRALS
04/21/21	(H)	HSS, FIN
04/22/21	(H)	HSS AT 3:00 PM DAVIS 106
04/22/21	(H)	Heard & Held
04/22/21	(H)	MINUTE(HSS)
04/27/21	(H)	HSS AT 3:00 PM DAVIS 106

BILL: HB 106

SHORT TITLE: MISSING PERSONS UNDER 21 YEARS OLD

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/19/21	(H)	READ THE FIRST TIME - REFERRALS
02/19/21	(H)	STA, HSS
03/11/21	(H)	STA AT 3:00 PM GRUENBERG 120
03/11/21	(H)	Scheduled but Not Heard
03/16/21	(H)	STA AT 3:00 PM GRUENBERG 120
03/16/21	(H)	Heard & Held
03/16/21	(H)	MINUTE(STA)
03/25/21	(H)	STA AT 3:00 PM GRUENBERG 120
03/25/21	(H)	-- MEETING CANCELED --
04/01/21	(H)	STA AT 3:00 PM GRUENBERG 120
04/01/21	(H)	Heard & Held
04/01/21	(H)	MINUTE(STA)
04/08/21	(H)	STA AT 3:00 PM GRUENBERG 120
04/08/21	(H)	Moved HB 106 Out of Committee

04/08/21	(H)	MINUTE (STA)
04/09/21	(H)	STA RPT 5DP 2NR
04/09/21	(H)	DP: CLAMAN, STORY, VANCE, TARR, KREISS-TOMKINS
04/09/21	(H)	NR: EASTMAN, KAUFMAN
04/22/21	(H)	HSS AT 3:00 PM DAVIS 106
04/22/21	(H)	Heard & Held
04/22/21	(H)	MINUTE (HSS)
04/27/21	(H)	HSS AT 3:00 PM DAVIS 106

BILL: SB 65

SHORT TITLE: LIABILITY CONSULTING HEALTH CARE PROVIDER
SPONSOR(s): KIEHL

02/03/21	(S)	READ THE FIRST TIME - REFERRALS
02/03/21	(S)	HSS, JUD
02/16/21	(S)	HSS AT 1:30 PM BUTROVICH 205
02/16/21	(S)	Heard & Held
02/16/21	(S)	MINUTE (HSS)
02/18/21	(S)	HSS AT 1:30 PM BUTROVICH 205
02/18/21	(S)	OPIOID OVERDOSE DRUGS
02/19/21	(S)	HSS RPT CS 3DP 1NR NEW TITLE
02/19/21	(S)	DP: WILSON, BEGICH, HUGHES
02/19/21	(S)	NR: REINBOLD
03/05/21	(S)	JUD AT 1:30 PM BUTROVICH 205
03/05/21	(S)	-- MEETING CANCELED --
03/08/21	(S)	JUD AT 1:30 PM BUTROVICH 205
03/08/21	(S)	Heard & Held
03/08/21	(S)	MINUTE (JUD)
03/12/21	(S)	JUD AT 1:30 PM BUTROVICH 205
03/12/21	(S)	Heard & Held
03/12/21	(S)	MINUTE (JUD)
03/31/21	(S)	JUD AT 1:30 PM BUTROVICH 205
03/31/21	(S)	Moved CSSB 65 (JUD) Out of Committee
03/31/21	(S)	MINUTE (JUD)
04/03/21	(S)	JUD RPT CS 3DP 2NR NEW TITLE
04/03/21	(S)	DP: KIEHL, HUGHES, MYERS
04/03/21	(S)	NR: REINBOLD, SHOWER
04/12/21	(S)	TRANSMITTED TO (H)
04/12/21	(S)	VERSION: CSSB 65 (JUD)
04/14/21	(H)	READ THE FIRST TIME - REFERRALS
04/14/21	(H)	HSS, JUD
04/27/21	(H)	HSS AT 3:00 PM DAVIS 106

WITNESS REGISTER

MEGAN HOLLAND, Staff

Representative Ivy Spohnholz
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: On behalf of Representative Spohnholz, prime sponsor of HB 116, provided a PowerPoint presentation entitled, "HB 116: Division of Juvenile Justice Clean-Up Bill."

TRACY DOMPELING, Director
Division of Juvenile Justice (DJJ)
Department of Health and Social Services (DHSS)

POSITION STATEMENT: During the hearing on HB 116, answered questions and provided testimony in support of the bill.

NANCY MEAD, General Counsel
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: During the hearing on HB 116, answered questions.

MATT DAVIDSON, Social Services Program Officer
Division of Juvenile Justice (DJJ)
Department of Health and Social Services (DHSS)

POSITION STATEMENT: During the hearing on HB 116, answered questions.

TREVOR STORRS, President & CEO
Alaska Children's Trust (ACT)
Anchorage, Alaska

POSITION STATEMENT: During the hearing on HB 184, provided invited testimony in support of the bill.

BRITANY MADROS, Director
Tribal Government & Justice Division
Tanana Chiefs Conference (TCC)
Fairbanks, Alaska

POSITION STATEMENT: During the hearing on HB 184, provided invited testimony in support of the bill.

KIM GUAY, Director
Office of Children's Services (OCS)
Department of Health and Social Services (DHSS)
Anchorage, Alaska

POSITION STATEMENT: During the hearing on HB 184, answered questions.

KATY GIORGIO, Staff
Representative Tiffany Zulkosky

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing on HB 184, answered questions on behalf of Representative Zulkosky, prime sponsor.

LISA PURINTON, Chief
Criminal Records and Identification Bureau
Division of Statewide Services
Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: During the hearing on HB 106, answered questions.

SENATOR JESSE KIEHL
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As prime sponsor, introduced CSSB 65(JUD).

CJ HARRELL, Intern
Senator Jesse Kiehl
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented CSSB 65(JUD) on behalf of Senator Kiehl, prime sponsor.

ROBERT CRAIG, CEO
Alaska Heart and Vascular Institute
Anchorage, Alaska

POSITION STATEMENT: During the hearing on CSSB 65(JUD), provided invited testimony in support of the bill.

JACOB KELLY, MD, MHS, FACC
Alaska Heart and Vascular Institute
Anchorage, Alaska

POSITION STATEMENT: During the hearing on CSSB 65(JUD), provided invited testimony in support of the bill.

PAM VENTGEN, Executive Director
Alaska State Medical Association (ASMA)
Anchorage, Alaska

POSITION STATEMENT: During the hearing on CSSB 65(JUD), answered questions.

ACTION NARRATIVE

[3:02:03 PM](#)

CO-CHAIR LIZ SNYDER called the House Health and Social Services Standing Committee meeting to order at 3:02 p.m. Representatives Fields, Spohnholz, McCarty, Prax, Zulkosky, and Snyder were present at the call to order. Representative Kurka arrived as the meeting was in progress.

HB 116-JUVENILES: JUSTICE, FACILITIES, TREATMENT

[3:03:43 PM](#)

CO-CHAIR SNYDER announced that the first order of business would be HOUSE BILL NO. 116, "An Act relating to care of juveniles and to juvenile justice; relating to employment of juvenile probation officers by the Department of Health and Social Services; relating to terms used in juvenile justice; relating to mandatory reporters of child abuse or neglect; relating to sexual assault in the third degree; relating to sexual assault in the fourth degree; repealing a requirement for administrative revocation of a minor's driver's license, permit, privilege to drive, or privilege to obtain a license for consumption or possession of alcohol or drugs; and providing for an effective date."

[3:04:16 PM](#)

CO-CHAIR SPOHNHOLZ introduced HB 116, as prime sponsor. She said HB 116 would do three things: close a loophole for sexual abuse of minors; update definitions that reference the Division of Juvenile Justice (DJJ) facilities and staff; and codify best practices. She explained that the loophole was found in 2017 when a DJJ staff member was acquitted after sustaining an inappropriate sexual relationship with a minor who had previously been under his supervision. The bill would close the loophole by adding DJJ staff to the list of individuals in a position of authority over DJJ youth. She related that the bulk of HB 116 would update the outdated, inaccurate, and obsolete terminology used to describe DJJ facilities in current statute and would update statute to reflect the authorities and responsibilities of the division more accurately. She advised that these portions of the bill would not substantively modify the way DJJ operates but would improve DJJ's ability to complete its mission and would codify best practices to ensure safe and secure treatment of juveniles in Alaska.

CO-CHAIR SPOHNHOLZ further conveyed that HB 116 would codify best practices at the division and clarify the division's

authority. She said these changes would resolve issues that have come to light over time or simply reflect the standard operations at the division. For example, HB 116 would add DJJ staff and probation officers to the list of mandatory reporters of child abuse and neglect. This is something that DJJ staff already does, she continued, but the bill would codify this in statute to ensure that DJJ probation officers have the authority to file amended petitions. The bill would correct language authorizing the department to disclose confidential information related to the offense when a minor has received an adjudication rather than the offense the minor was alleged to have committed. In summary, she stated, HB 116 would improve DJJ's ability to complete its mission by codifying best practices, ensuring juveniles are safe and secure, and closing the loophole regarding sexual abuse of a minor supervised by DJJ staff.

3:07:00 PM

MEGAN HOLLAND, Staff, Representative Ivy Spohnholz, Alaska State Legislature, on behalf of Representative Spohnholz, prime sponsor of HB 116, provided a PowerPoint presentation entitled, "HB 116: Division of Juvenile Justice Clean-Up Bill." She began with slide 2 titled, "1. Closes a loophole for sexual abuse of minors," which read [original punctuation provided but formatting changed]:

- Daniel Carey case in 2017
 - DJJ staff sustained an inappropriate sexual relationship with a juvenile under DJJ supervision.
 - Carey was acquitted because a judge found that sexual abuse of a minor statute does not explicitly list DJJ staff as "being in a position of authority" over DJJ youth.
- Section 6
 - Clarifies that DJJ staff are in a position of authority over minors in their custody.

MS. HOLLAND moved to slide 3, "2. Updates Definitions," which read [original punctuation provided but formatting changed]:

- Repeals
 - Youth Counselors
 - Juvenile Detention Home
 - Youth Detention Facility
 - Correctional School
 - Juvenile Work Camp
 - Juvenile Probation Officers

- Correctional School
- Amends
 - Juvenile Detention Facility
 - Minor
- New Definitions
 - Juvenile Treatment Facility
 - Temporary Secure Juvenile Holding Area
 - Juvenile Probation Officers

MS. HOLLAND spoke to slide 4, "Repeals," which read [original punctuation provided but formatting changed]:

- "Youth Counselors," Section 26
 - The position of "Youth Counselors" has not existed within DJJ since 2003. The duties described under this section do not apply to facility staff but to probation officers.
- "Juvenile Probation Officers," Section 3
 - Inaccurate definition limiting to officers with individuals 18 or 19 years of age in their custody
 - Corrected with new definition in Section 26.
- "Juvenile Detention Home," "Youth Detention Facility," "Correctional School," "An Institution" and "Juvenile Work Camp," Sections 1, 10, 11, 12, 13, 19, 20, 32 and 34
 - All are repealed and replaced with "juvenile detention facility" and "juvenile treatment facility" for accuracy and consistency.

[3:09:34 PM](#)

MS. HOLLAND proceeded to slide 5, "Amended Definitions," which read [original punctuation provided but formatting changed]:

- "Minor," Section 30
 - Amends the definition of minor to include a person who was under 18 at the time they committed an offense and is subject to the jurisdiction of DJJ.
 - If a minor commits an offense then turns 18 after, they will remain in DJJ's custody.
- "Juvenile Detention Facility," Sections 29 and 37
 - Corrects the definition to be a secure facility for the detention of delinquent minors under DJJ custody.
 - The current definition limits it to separate quarters within a city jail, some communities do not

have such a jail suitable for juveniles and use other facilities.

MS. HOLLAND addressed slide 6, "New Definitions," which read [original punctuation provided but formatting changed]:

- "Juvenile Treatment Facility," Section 31
 - Current statute refers to "juvenile treatment institutions", however DJJ has expressed that this terminology is not reflective of the facilities they currently operate.
- "Temporary Secure Juvenile Holding Area," Section 31
 - DJJ has been operating with a list of temporary secure holding areas in various communities throughout the state.
- "Juvenile Probation Officers," Section 26
 - There is no accurate definition for "juvenile probation officers" under current statute. Section 24 repeals the definition for "youth counselors" and replaces it with an updated definition for "juvenile probation officers", affording them powers of a probation officer and describing their duties.

MS. HOLLAND turned to slide 7, "3. Codified Best Practices," which read [original punctuation provided but formatting changed]:

- Section 5: Clarifies that employees of juvenile treatment institutions and juvenile and adult probation officers qualify as legal guardians.
- Sections 16 and 18: Provides juvenile probation officers with the authority to file amended and supplemental petitions, and clarifies that for juveniles this duty falls upon juvenile probation officers, not adult probation officers.
- Sections 24-25: Clarifies that the authority to arrest and detain minors rests with juvenile, not adult, probation officers.

[3:12:30 PM](#)

MS. HOLLAND continued with slide 8, "3. Codified Best Practices," which read [original punctuation provided but formatting changed]:

- Section 27: Adds "secure residential psychiatric treatment centers" to the list of facilities from which, when a juvenile is released, victims will receive notification.
- Section 28: Corrects language authorizing the department to disclose confidential information related to an adjudicated offense, rather than the offense the minor was "alleged to have committed."
- Section 40: Adds juvenile probation officers, DJJ office staff, and staff of juvenile facilities to the list of mandatory reporters of child abuse or neglect.
- Section 41: Repeals revocation of juvenile driver licenses for offenses involving a controlled substance that were handled informally by the division.

MS. HOLLAND concluded with slide 9, "In Summary, HB 116:" which read [original punctuation provided but formatting changed]:

1. Closes a loophole of the sexual abuse of minors
2. Updates terms and definitions pertaining to DJJ facilities and staff
3. Codifies best practices to improve the division's ability to complete their mission

[3:16:20 PM](#)

CO-CHAIR ZULKOSKY commented that she doesn't see a need for the sectional analysis because the committee saw this bill last year. She asked whether she is correct in understanding that the bill's purpose is largely to clean up outdated language.

CO-CHAIR SPOHNHOLZ confirmed that the bulk of HB 116 is a routine statutory cleanup. She said the bill passed the House last year and probably would have made it "across the finish line" had it not been for COVID-19 forcing the legislature to recess six or seven weeks ahead of schedule.

[3:17:41 PM](#)

REPRESENTATIVE KURKA drew attention to slide 8 which states that Section 41 would repeal revocation of juvenile driver's licenses for offenses involving a controlled substance that were handled informally by the division. He asked whether current law mandates the penalty of juveniles losing their driver's licenses should an instance described in the section occur.

[3:18:48 PM](#)

TRACY DOMPELING, Director, Division of Juvenile Justice (DJJ), responded that several years ago there were two sections within the division's statutes that required the mandatory revocation of a license for certain types of offenses under Title 28. She explained that one of these sections was for those youth who had been formally adjudicated through the Superior Court for those charges and the other referenced youth whose cases were adjusted informally through DJJ. Adjudicated offenses have gone through the Superior Court and the youth have been provided with due process, whereas informally adjusted cases are instances where the youth doesn't have an attorney and agreements are worked out between youth parents and victims. About six years ago, she recounted, the piece which required the mandatory revocation for adjudicated offenses was repealed from DJJ's statutes, but inadvertently left the section of statute for informally adjusted cases, thereby mandating DJJ to take a harsher stance for informally adjusted cases than for adjudicated cases. There are still sections under Title 28 that allow the court to revoke for those adjudicated cases, Ms. Dompeling said, it just took it out of DJJ's responsibility to do so. She highlighted the importance of ensuring that similar penalties or sanctions for youth are applied to informally adjusted cases as to formally adjudicated cases.

REPRESENTATIVE KURKA requested confirmation that a process will remain in statute in adjudicated cases where a judge could decide to revoke a driver's license as a penalty for an offense.

MS. DOMPELING answered, "That is correct, it's only for those offenses that are listed out under Title 28," which pertain to drugs and weapons.

[3:22:16 PM](#)

REPRESENTATIVE MCCARTY asked whether more severe substance-related issues, such as driving under the influence (DUI), would be considered by the court.

MS. DOMPELING deferred to Ms. Nancy Mead of the Alaska Court System to answer the question.

[3:22:56 PM](#)

NANCY MEAD, General Counsel, Alaska Court System, answered that the court does not revoke driver's licenses for cases of minors consuming alcohol. She said that in about 2016 or 2017 those

offenses began being treated as "straight violations" like a traffic ticket, no matter how many a minor may receive; so, for minor consuming alcohol straight violations the court may not revoke the driver's license. Under AS Title 28, she continued, the court has the ability to revoke driver's licenses for minors in possession of drugs or for other violations of AS 11.41, the "drug statutes," as well as for minors in possession of weapons or minors misusing weapons.

REPRESENTATIVE SPOHNHOLZ stated that Ms. Mead clearly described current statute. However, she explained, HB 116 attempts to create parity by clarifying that there not be a stricter enforcement penalty for "less serious" cases that are informally resolved outside of the court system and cases that go through the formal court system.

[3:24:34 PM](#)

REPRESENTATIVE MCCARTY asked whether a juvenile youth could have one or more DUI [offenses] and the court would not be able to revoke that youth's license even though that is an [offense] that could result in someone's death.

MS. MEAD responded that HB 116 would not affect DUI laws. The laws about DUI, she explained, are wholly separated from the laws for minors consuming alcohol. Prior to October 2016, a minor consuming alcohol on a park bench could have his or her license revoked, and because revoking a license is considered a quasi-criminal proceeding that minor was entitled to a jury trial and a defense attorney. Driving under the influence is a wholly separate statute, she continued, which has mandatory license revocations no matter the age of the individual involved. This bill would not touch DUI whatsoever, nor would it touch minor consuming alcohol. Ms. Mead related that a few years ago a standard was in place that allowed for minors consuming alcohol to be given lower types of penalties in courts, meaning that these minors' licenses couldn't be taken away. She said the repealers in HB 116 would create a symmetry to allow for minors who are prosecuted through DJJ to not have their licenses revoked either. She noted that minors prosecuted through DJJ usually means the minor behaved less egregiously.

REPRESENTATIVE MCCARTY offered clarification that HB 116 would only impact minors who had engaged in poor behavior that was not related to a vehicle.

MS. MEAD agreed.

3:27:38 PM

MS. DOMPELING provided testimony in support of HB 116. She explained the bill was introduced at the division's request to address long identified and newly emerging statutory issues related to juvenile justice. She noted that this legislation passed from the House Health and Social Services Standing Committee [in 2020]. She said the original statutes, AS 47.12, were passed when DJJ became its own division approximately 20 years ago, and the proposed updates to definitions and statutes mirror the efforts to improve the success of the youth who are engaged in the juvenile justice system through best practice and innovative approaches to address youth delinquency. These definitions, she added, have a real impact on the work of the division's staff and on youth safety, the most dramatic change being the criminal case against the former DJJ employee who was acquitted of sexual abuse due to the lack of an updated definition of DJJ staff in position of authority.

3:30:02 PM

CO-CHAIR SNYDER opened public testimony on HB 116. After ascertaining that no one wished to testify, she closed public testimony.

3:30:21 PM

REPRESENTATIVE MCCARTY inquired about Mr. Matt Davidson's role in HB 116.

3:30:39 PM

MATT DAVIDSON, Social Services Program Officer, Division of Juvenile Justice (DJJ), stated he has worked with the sponsor over the last three legislatures to develop this legislation, and therefore he is familiar with the bill's provisions and why individual components are termed the way they are.

REPRESENTATIVE MCCARTY inquired about the term "legal guardian" found on page 2 of HB 116.

MR. DAVIDSON replied that Section 5 is the definition of "legal guardian" for the crimes related to sexual abuse of a minor. He explained that when developing the bill, a look was taken at the current definitions in statute that referred to juvenile justice facilities operated by DJJ; terms were sprinkled throughout

statute that were very similar terms to the department's facilities. So, throughout the bill where those statutes are touched, an attempt is made to provide specificity as to which facilities and staff are being talked about. Section 5 is the definition of the crime of engaging in sexual contact or sexual relations with a minor who is under the custody or supervision of DHSS, he noted, so that relates to youth in facilities operated by the department as well as the division. The Office of Children's Services (OCS), he continued, places children in treatment institutions, and because these children are under state custody while placed in treatment institutions operated by nonprofits and other agencies, this same provision, the same offenses, apply to staff of those facilities as well as to department staff.

[3:33:53 PM](#)

REPRESENTATIVE MCCARTY stated that in his 30 years of experience there is a separation of legal guardian being that of a parent or someone who is a custodial guardian and a ward of the court. He said it appears that wards of the court are being referred to in this situation rather than legal guardians because these individuals have been placed in institutions by the court or court systems.

MR. DAVIDSON answered that the terms would have the same meaning in this specific statute. He said it is not creating the definition of a legal guardian that was existing in the sexual abuse of a minor statute, rather it is just updating the terms relating to those positions that qualify as legal guardians. In Division of Juvenile Justice statute and in OCS child protection statute, the term legal guardian or legal custody are used and sometimes interchangeably, and ward of the court is probably similar to that or could be replacing that, but in this case in statute the term is legal guardian.

[3:35:39 PM](#)

REPRESENTATIVE MCCARTY stated that AS 13.06.050 defines a legal guardian and doesn't include all these categories. He said it seems AS 47 is expanding on that or using the exact same terminology but in a different way, making it confusing.

REPRESENTATIVE SPOHNHOLZ explained that the section of law being addressed by HB 116 applies to the Division of Juvenile Justice only and another category of employees is being added to which this applies. She said it already applies to group homes and

youth facilities, and the bill would add employees of treatment institutions and juvenile probation officers. [Current] law is probation officers, and HB 116 clarifies it means both adult and juvenile probation officers, which would close the loophole that was identified in the 2017 case.

[3:37:23 PM](#)

REPRESENTATIVE KURKA observed Section 41 would repeal multiple statutes. He asked whether all these statutes deal with the same subject of juvenile justice.

MS. HOLLAND pointed out that AS 47.12.990 and AS 47.14.990 in Section 41 relate to repealed definitions, which includes detention homes and juvenile work camp. She said AS 28.15.176 and AS 47.12.060 are the revocations related to the driver's license. Responding further to Representative Kurka, she said anything ending in 990 is a definition, and AS 28.15.176 and AS 47.12.060 are the revocations related to the driver's license.

[3:40:18 PM](#)

REPRESENTATIVE MCCARTY noted that the bill's intent is to clean up different language pieces. He suggested alternate wording regarding "legal guardian."

CO-CHAIR SNYDER stated that the definition within a statute is exceptionally important because there is a limited range of vocabulary.

MS. HOLLAND noted that Title 11 relates to the sexual abuse of a minor and page 2, lines 30-31, apply "when those persons are exercising custodial control over a minor or other person". She said that if additional clarification is needed to that definition, it would be appropriate to ask the division.

MR. DAVIDSON explained that when drafting the bill, the attempt was not to fix everything but rather to ensure that the loopholes in criminal statute were fixed to relate to actions by DJJ staff and to update terms that referred to DJJ staff. He allowed there might be misalignments elsewhere in statute that weren't considered as part of this bill and offered to talk about that with Representative McCarty.

REPRESENTATIVE SPOHNHOLZ suggested there are probably many parts of statute that intersect but pointed out that when drafting the bill, the intent was not necessarily to be expansive and apply

to every section of law that could relate to children. Rather, the intent was to focus on the specific elements related to the Division of Juvenile Justice in the definitions and solve the problems that are on the books. She encouraged Representative McCarty to talk with Mr. Davidson about the sections of law that were chosen. She noted that last year the House unanimously passed the legislation, and she would like to protect that progress and get this done this year because the division has been waiting a long time to have this done.

[CO-CHAIR SNYDER held over HB 116.]

HB 105-DETENTION OF MINORS

[3:45:48 PM](#)

CO-CHAIR SNYDER announced that the next order of business would be HOUSE BILL NO. 105, "An Act relating to the duties of the commissioner of corrections; relating to the detention of minors; relating to minors subject to adult courts; relating to the placement of minors in adult correctional facilities; and providing for an effective date."

[3:46:32 PM](#)

The committee took a brief at-ease.

[3:47:59 PM](#)

CO-CHAIR SNYDER, responding to Representative McCarty, confirmed that last week the committee heard [CSHB 105(JUD)].

[3:48:50 PM](#)

REPRESENTATIVE KURKA suggested merging HB 105 and HB 116 given the two bills overlap significantly and the desire for timely passage of both bills.

CO-CHAIR SNYDER concurred and stated that HB 105 was slowed down for this reason. She said conversations are still ongoing about what a merge might look like. The intention in hearing both bills separately today but taking no action, she explained, is to allow for questions to be answered given they would still be pertinent should the bills be combined.

REPRESENTATIVE KURKA inquired about a memo that listed the duplicative changes or similarities proposed in both bills.

CO-CHAIR SNYDER replied that "the crosswalk" was sent to the committee on [4/23/21]. She held over HB 105.

HB 184-REQUIRE TRIBAL CHILD WELFARE COMPACT

[3:52:37 PM](#)

CO-CHAIR SNYDER announced that the next order of business would be HOUSE BILL NO. 184, "An Act requiring state participation in a tribal child welfare compact."

[3:53:01 PM](#)

CO-CHAIR SNYDER opened invited testimony on HB 184.

[3:53:29 PM](#)

The committee took an at-ease from 3:53 p.m. to 3:56 p.m.

[3:56:20 PM](#)

TREVOR STORRS, President and CEO, Alaska Children's Trust (ACT), provided invited testimony in support of HB 184. He said ACT is in strong support of an Alaska tribal child welfare compact, a government-to-government partnership between the State of Alaska and Alaska's 18 federally recognized Native tribes and tribal organizations that would share the tasks of funding negotiated child welfare services and supports. He pointed out that Alaska Native children make up 15 percent of the state's general population but represent about 65 percent of the kids in state custody. These numbers, he stated, are a direct result of colonization, historical trauma, and racism.

MR. STORRS said there is no question that the intervention from state government may be well-meaning, but without consultation or coordination with tribal entities it is at best the "white savior complex" and at worst "reinforcing colonization." When historically white institutions impose their practices and policies as the right way even when they are doing harm, they are sending the message of colonization, the message that Alaska Native people can't be trusted to do or know what is best for themselves. A compact, he continued, would be a first step in addressing and changing the systemic racism in the system and taking the long overdue steps towards acknowledgement, accountability, and healing. Coming together to combat child abuse and neglect across sectors works when local and state

governments have strong trust and partnership, he stated. Trust is built by acknowledging harm that has been done to communities and taking ownership of the ways colonization has shaped operation of the child welfare system prior to the Alaska Tribal Child Welfare Compact.

[3:58:21 PM](#)

MR. STORRS explained that taking children from their families, cultures, and communities to place in foster care and adoption outside their culture has caused multiple generations of historical trauma. He said poor outcomes are seen for Alaska Native children in the child protective system due to complex chronic trauma reinforced by systems that are not built for, or by, them. The impact of institutionalized child abuse and neglect is a cycle of historical trauma that started with the trauma of colonization and continues with personal family trauma, removal of children from families, mental health issues, collective trauma, and more. The basic principles of state child protection, he continued, are that when a family fails to ensure safety and well-being of the child, the state steps in, possibly removes the child, and assumes the system is better than the parent. This model does not work, he charged, especially for Alaska Native children and families. When these situations are identified, who better than the communities themselves to work with the families and the tribe to identify needs and resolve the issues? A key step in healing the historical traumas caused over time, Mr. Storrs stated, is to return power to the tribes to care for their own children in ways that center tribal community knowledge, customs, and values. He pointed out that identified at-risk families receive very few services for poverty reduction, housing, mental health, health, or substance misuse. He stressed the need to reframe how child welfare services are thought about and urged that these services be addressed when talking about child welfare.

MR. STORRS stated that now is the time to give self-determination and sovereignty to the communities to determine how best to care for their children and families by giving power back to the tribes. He said a tribal child welfare compact would be a huge step towards ensuring that Native children grow up in safe, stable, and nurturing relationships and environments. He related ACT's wholehearted support for HB 184.

[4:01:36 PM](#)

BRITANY MADROS, Director, Tribal Government & Justice Division, Tanana Chiefs Conference (TCC), provided invited testimony in support of HB 184. She noted that TCC is one of twelve Alaska Native regional nonprofit corporations and provides a unified voice in advancing sovereign tribal governments. She further noted that TCC services all tribal members of the 37 federally recognized tribes within its 235,000-square-mile region, as well as all eligible Alaska Native and American Indians residing within the Fairbanks North Star Borough.

MS. MADROS stated that since the early 1980s TCC has assisted the tribes within its region with developing tribal courts, and TCC supports this development through training, technical assistance, and legal support. She said Alaska tribes are confirmed to have clear civil jurisdiction, particularly in domestic relations over children, even in the absence of Indian Country or tribal reservations. In 2020, she conveyed, the TCC region had 191 children in tribal court custody; intervened on 92 state Indian Child Welfare Act (ICWA) cases; had 23 children transferred from state to tribal court custody; reunified 21 children with one or both parents, resulting in family preservation; had four youth age out of the foster care system; had 10 children granted guardianships with family or extended relatives; had 32 youth still in long-term guardianships; and facilitated over 280 tribal court hearings for child welfare cases.

[4:04:43 PM](#)

MS. MADROS said solutions are now emerging for multiple ways for tribes and states to work together, including the tribal-state welfare compact being discussed today. She related that TCC has provided services through the diligent relative search scope within the compact, has assisted with approximately 30 cases for ensuring ICWA-preference placements for families, and assisted about seven families with submitting a petition so they could be considered a foster care placement for one of their family members. She shared that TCC is looking to extend its scopes and assist with safety evaluations, safe visitations, and licensing given TCC also has its own tribal care licensing program. However, Ms. Madros continued, due to staff shortages and the amount of time needed to cover so many scopes, TCC is hoping the state continues to work together on negotiations to ensure the provision of these services, whether working with tribal or state workers depending on the needs of those families.

MS. MADROS expressed TCC's support for this compact agreement and added that TCC is thankful the state is working with the tribes regarding child welfare. She said it is important to the tribes that the safety and well-being of their children is protected, whether by the state or tribe, because without their children the tribes will not continue to exist. She thanked the committee for considering HB 184.

4:07:25 PM

REPRESENTATIVE PRAX offered his understanding that the state was going to be talking with the tribes and reach an agreement. However, he continued, the previous speaker made it sound like somebody was going to dictate something to the state, and [the legislature] had to go along with it. He asked whether there are examples of what is being talked about in HB 184.

CO-CHAIR ZULKOSKY answered that the intent of HB 184 is not to dictate but to provide a collaborative partnership to address issues. She said the intention behind a tribal child welfare compact, as highlighted by the testimony of Mr. Storrs, is that it is a collaborative partnership to address the issues of child welfare across Alaska, particularly given that a significant disproportionate percentage of the children in foster care in Alaska are Alaska Native youth. As heard in the testimony of Ms. Madros, tribes are willing, able, and standing to negotiate with the state every year to provide these programs in alignment with the State of Alaska. The bill, she continued, merely says that the state shall participate in a tribal child welfare compact. The particulars related to the negotiations of the scopes of work and the annual funding agreement are negotiated between the tribes and the state every year, she explained. Nothing is dictated in HB 184 beyond that this compact and agreement will be enshrined and protected in statute.

4:09:50 PM

REPRESENTATIVE KURKA stated that while he is excited about the progress being made here on the child welfare compact, he is concerned about the requirement that the state participate. He requested further explanation regarding the annual renegotiation process.

CO-CHAIR ZULKOSKY responded that the current Alaska Tribal Child Welfare Compact is an executive initiative within the governor's office and administration. She related that it began under the Walker Administration and has been continued under the Dunleavy

Administration. The compact itself is a legal document and agreement that is outlined between the tribes and the state, she explained, and updates are negotiated annually. They may revisit scopes of work that can be expanded, they might identify issues that were had in implementing certain scopes of work, or they may revisit funding agreements related to those scopes of work. Every year there is an effective and efficient evaluation of the current scopes of work and what is being accomplished to determine if updates need to be made, which is nimbler than statute or regulation. It allows for more local control, she continued, and more opportunity for tribes to provide feedback on what is or isn't working, as well as for the state to provide feedback, and allows an opportunity for those updates to be made annually.

[4:13:29 PM](#)

REPRESENTATIVE KURKA asked who is negotiating the compact on behalf of the state.

[4:13:57 PM](#)

KIM GUAY, Director, Office of Children's Services (OCS), Department of Health and Social Services (DHSS), responded that currently the state has three co-lead negotiators: herself as director of OCS; Clinton Lasley, DHSS Deputy Commissioner, Family, Community and Integrated Services; and John Moller of the governor's office. She noted that the tribal side also has three lead negotiators.

REPRESENTATIVE KURKA asked whether, from the perspective of the administration, passage of HB 184 as written would tie hands, alter the negotiations that are happening now, or change the tone of the current negotiations.

MS. GUAY replied she doesn't know the answer to the question, but that the compact is a legally binding document. She stated that [the administration] is engaged in the tribal compact and has no intention of not engaging in the compact.

REPRESENTATIVE SPOHNHOLZ noted that the first tribal compact was signed in 2017, and both the Walker and Dunleavy administrations have supported the compact. She explained that HB 184 is only nine lines long, is very general and gives the administration a lot of flexibility in how it would be implemented. The bill doesn't say what specific scopes of work must be included and has no fiscal note. She said it is a policy call on the part of

the legislature to say that child welfare compacting with tribes is a good thing and the legislature wants the administration to continue to do that.

[4:17:36 PM](#)

REPRESENTATIVE MCCARTY noted that the premise of this whole thing is the protection of children. He asked Mr. Storrs whether there are criteria for what represents child abuse.

MR. STORRS replied that it is already outlined, and OCS has criteria that it follows.

REPRESENTATIVE MCCARTY recalled Mr. Storrs' statements about multi-generational patterns within families and communities. He inquired about the differences in criteria for child abuse in tribal areas or villages versus non-tribal areas in Alaska. Responding to Ms. Guay, he confirmed he is asking about the difference of maltreatment between rural communities and more urban communities but added that he is asking this with the paradigm of criteria that are had for the care of all children and making sure no child is abused, and the differentiation that is being seen.

MS. GUAY answered that there is a disproportionate number, 60-65 percent, of Alaska Native children throughout the system and that includes the number of children reported to OCS. She said this disproportionate number is consistent on all decision points that happen at OCS - the reporting calls that come into OCS, the calls that are subsequently investigated after screening, the ones that end up into maltreatment, and the ones that end up into foster care.

[4:22:32 PM](#)

CO-CHAIR ZULKOSKY offered her opinion that the last question is a bit off topic and seems like an implication that Alaska Native families are implicitly more likely to neglect or abuse their children. She requested clarification of the question.

REPRESENTATIVE MCCARTY disagreed with that interpretation. He stated that when doing an equitable review of all the children in Alaska he is asking whether it is disproportionate because of bias, or disproportionate because there is a need that exists and how that need can be reached most effectively. What the ways are to reach that need, he continued, and whether those are being done is the whole question of the bill.

MS. GUAY stated that the best option for families is to have tribal members meet the families where they're at to help them access both cultural and modernized resources. She pointed out that tribes can navigate both the tribal world and the state world, so the tribes know how to seek the resources for their families that are in need. Regarding Representative McCarty's first question, Ms. Guay said she doesn't know the answer but thinks it goes into poverty in children as well as bias of people over-representing calling in reports on Alaska Native children. Also, Alaska Native children and families are surrounded with a lot more mandatory reporters than other families, she noted. Alaska Native families are reported for numerous reasons, including historical trauma and other things that equate into why Alaska Natives are disproportionately represented in OCS and amongst other systems.

MS. MADROS agreed the question is complex and that there are many variables of why Alaska Native children are disproportionately represented. She said a lot of that has taken years to accumulate to where things are at today, although the 60-65 percent has stayed steady for many years. Due to services being harder to be received or met in isolated communities, she continued, it possibly makes Alaska Native families and communities have more hurdles to either get an investigation closed or if a case is created to get that case closed with reunification. Poverty and isolation play a role in the many hurdles faced by Alaska Native families, she added, along with other more sensitive topics like generational trauma and topics that are heard as buzz words when speaking of child welfare and child protection.

[4:27:41 PM](#)

REPRESENTATIVE PRAX asked whether the existing compact is available for review.

CO-CHAIR ZULKOSKY replied that it is on the DHSS website. She further noted that the tribes will make specific elements of the compact available at the request of committee members.

REPRESENTATIVE MCCARTY requested that the committee receive the compact.

CO-CHAIR SNYDER noted the request.

REPRESENTATIVE KURKA asked whether the entire compact is on the website or just parts.

CO-CHAIR ZULKOSKY responded that the tribes will provide elements at the committee's request and the compact itself is on the DHSS website.

[4:29:54 PM](#)

KATY GIORGIO, Staff, Representative Tiffany Zulkosky, Alaska State Legislature, on behalf of Representative Zulkosky, prime sponsor of HB 184, answered that the 2017 compact is available on the OCS website. She said Ms. Hensley could provide more details on the annual negotiations

[4:30:07 PM](#)

CO-CHAIR SNYDER opened public testimony on HB 184, then closed public testimony after ascertaining no one wished to testify.

[4:30:28 PM](#)

CO-CHAIR ZULKOSKY provided closing comments on HB 184. She said the state and DHSS intend to continue the Tribal Child Welfare Compact, which was related by Ms. Guay. A compact agreement is signed, scopes of work are negotiated, and funding agreements are tied to the different scopes of work. It is very important for the state to meet families where they are at. She pointed out that tribes offer an opportunity to wrap the preventative resources that they receive from the federal government around families; the intention is not to remove children from their families, but to keep them preserved in their families. This work complements the Indian Child Welfare Act (ICWA). All these parts work together, Co-Chair Zulkosky continued, there is not one element of child welfare that is going to turn the tide on the disproportionality. There are multi-faceted components which lead families to crisis, and which lead the state to getting involved, and in this situation the intention is to engender public trust by tribes. Families are more inclined to work with the tribe than the state and better results are seen because of that. The only way to turn the tide on the disproportionality, she opined, is making a policy call that by providing state services as close to home as possible through familiar entities like tribes in Alaska villages is in the best interest of both the state and the tribes. The intent behind drafting the bill's current language is to keep it broad and general to have the most amount of latitude so there is not any

tying of hands. If tribes can leverage federal resources, she added, the state will see cost savings. She said HB 184 seeks to protect and preserve the ingenuity of what the Tribal Child Welfare Compact is.

[4:34:48 PM](#)

REPRESENTATIVE KURKA stated that due to unanswered questions he will not vote to pass HB 184 out of committee.

REPRESENTATIVE SPOHNHOLZ stated that child welfare compacting creates opportunity to make big progress in keeping families together and keeping communities together. This compacting has been successful so far by helping to provide higher quality services closer to home at a lower cost, she continued. It has helped to strengthen state services and leverage the resources that tribes bring to the discussion on an issue of shared interest, which has increased public trust in the process; it is a proven strategy that builds on the strengths of communities. She said the sponsor has done a great job of giving the administration lots of flexibility to be able to manage it effectively in partnership with local tribes. She offered her support for advancing the bill.

REPRESENTATIVE FIELDS expressed his support for HB 184 as a positive step.

[4:38:47 PM](#)

REPRESENTATIVE FIELDS moved to report HB 184 out of committee with individual recommendations and the accompanying zero fiscal note.

REPRESENTATIVE MCCARTY objected. He allowed there is merit in what Representative Spohnholz has shared and that wrap-around services in the community are best, he stated he needs more information to be able to make an informed decision.

A roll call vote was taken. Representatives Spohnholz, Fields, Zulkosky, and Snyder voted in favor of HB 184. Representatives McCarty, Prax, and Kurka voted against it. Therefore, HB 184 was reported out of the House Health and Social Services Standing Committee by a vote of 4-3.

[4:40:52 PM](#)

The committee took an at-ease from 4:40 p.m. to 4:46 p.m.

HB 106-MISSING PERSONS UNDER 21 YEARS OLD

[4:46:36 PM](#)

CO-CHAIR SNYDER announced that the next order of business would be HOUSE BILL NO. 106, "An Act relating to missing persons under 21 years of age." She noted that the bill is [sponsored by House Rules] by request of the governor.

CO-CHAIR SNYDER observed that page 1, lines 4-6, Section 1, of the bill would remove the language "in addition to the requirements of AS 47.10.141 regarding reports of missing minors". She related that there is concern about what else might be lost given that it is a big section. She surmised this language does not remove the requirements, but rather that they are just no longer referenced in this part of statute.

[4:48:25 PM](#)

LISA PURINTON, Chief, Criminal Records and Identification Bureau, Division of Statewide Services, Department of Public Safety (DPS), confirmed it is correct that this would not replace the requirement. She said it would add clarification to AS 18.65.620 by adding the new section which bridges a gap that exists under AS 47.10.141. She explained that AS 47.10.141 requires it is very specific to minors and AS 18.65.620 adds the clarification to expand that scope to anybody under the age of 21 so that significant changes to the definition of a minor do not have to be made throughout many statutes.

[4:49:27 PM](#)

REPRESENTATIVE KURKA noted that the second paragraph of the sponsor's statement says these laws are being changed to comply with federal law changes. He inquired about the legal or financial consequences to the state of not passing this bill and not being 100 percent in sync with the federal guidelines.

MS. PURINTON answered that she doesn't know there would be a financial or legal cost but said this conflict in state law makes it difficult for the Department of Public Safety to audit and require law enforcement agencies to comply with the more restrictive federal requirements. The change, she explained, is to encourage all law enforcement agencies to report this data for the vulnerable population between the ages of 18 and under 21 so that information can be put into state and national

databases more quickly. Many studies, she added, have shown that the chances of recovery for a missing person are very high within the first 48 hours.

CO-CHAIR SNYDER announced that HB 106 is held over.

SB 65-LIABILITY CONSULTING HEALTH CARE PROVIDER

[4:51:29 PM](#)

CO-CHAIR SNYDER announced that the final order of business would be CS FOR SENATE BILL NO. 65(JUD), "An Act relating to immunity for consulting physicians, podiatrists, osteopaths, advanced practice registered nurses, physician assistants, chiropractors, dentists, optometrists, and pharmacists."

[4:51:53 PM](#)

SENATOR JESSE KIEHL, Alaska State Legislature, as prime sponsor, introduced CSSB 65(JUD). He turned to his intern, Ms. CJ Harrell, to present the bill.

[4:52:26 PM](#)

CJ HARRELL, Intern, Senator Jesse Kiehl, Alaska State Legislature, presented CSSB 65(JUD) on behalf of Senator Kiehl, prime sponsor. She explained that when health care providers need advice on how to treat a patient it is common for them to casually reach out to other health care professionals. She said it is considered a "curbside" consultation when the conversation is uncompensated and informal, and the consulting health care provider has no relationship with the patient. Curbside consultations happen regularly in Alaska and other states as they are a fast and effective way for a health care provider to get advice.

MS. HARRELL stated that should a civil liability case occur, CSSB 65(JUD) answers a new question of who would be liable - the patient's health care provider or the professional who gave the advice. She said current liability remains with the direct health care provider. However, she continued, there was a case in 2019 in Minnesota where a consulting health care provider did have to defend himself. The Minnesota Supreme Court's ruling threatened to upend this important part of American health care. Medical professionals need to feel comfortable giving this valuable advice to their colleagues, she explained, and CSSB 65(JUD) would allow curbside consultations to continue without

fear of the consulting health care provider becoming subject to civil liability for a patient with whom they had no relationship. At the same time, she said, it keeps the longstanding rule clear that the treating health care provider is the one responsible if a civil liability case occurs.

[4:54:08 PM](#)

SENATOR KIEHL provided a sectional analysis. He said the bill is a single section with the initial nine subsections describing situations where under current law and under common understanding a doctor-patient relationship, or duty of care, is established. In these situations, he explained, [the health care professional] giving advice is still potentially liable because of having a duty to the patient through laying hands on the patient, being paid, and being part of a practice that is treating the patient. A curbside consult and the liability shield under CSSB 65(JUD) only occur when [the health care professional] does not have that duty of care. Senator Kiehl pointed out that subsection (b) is also important and is written so that if the rare case happens where there is harm to a patient and a liability, the patient is able to recover the full amounts allowed under Alaska law; the patient's recovery cannot be reduced because there was a curbside consult. He said the bill also provides definitions for all the terms.

[4:55:57 PM](#)

[CO-CHAIR SNYDER opened invited testimony on CSSB 65(JUD).]

[4:56:28 PM](#)

ROBERT CRAIG, CEO, Alaska Heart and Vascular Institute, provided invited testimony in support of CSSB 65(JUD). He explained that the institute's physicians take calls at any time of the day or night from physicians elsewhere in the state who have cardiology-related questions or tests to interpret for patients in their care. Since the institute's doctor will not have a patient record and will be unfamiliar with the patient in question, a special burden is placed on the institute's doctor to be open to potential civil liability, but the institute's physicians are interested in giving timely and accurate information to the calling physician in order to care for that patient. The other option to this, he pointed out, is to advise the calling physician to send the patient to Anchorage or make a formal request by way of consultation, but the downside is that this can delay care as well as increase potential health care

cost. He said the goal of the institute's providers is to continue to provide a high level of cardiology-related service in a high quality and low-cost manner to the state's providers calling for that service. He concluded by stating that the institute supports CSSB 65(JUD).

4:58:27 PM

JACOB KELLY, MD, MHS, FACC, Alaska Heart and Vascular Institute, provided invited testimony in support of CSSB 65(JUD). He said he is one of two advanced heart failure and cardiac transplant cardiologists in Alaska. He related that, in general when on call, an institute doctor is on call throughout the entire state, and during a 24-hour period he has had as many as 20 different phone calls and curbsides helping physician's assistants, nurse practitioners, health aides, and other physicians so they can deliver care timely and on site. Very few locations in Alaska have cardiologists, he added, so there is no local option. He pointed out that a lot of what the institute's doctors do isn't remunerated and is to provide care because the first oath a doctor takes is to not harm people and afterwards doctors want to help patients extend their lives, reduce suffering, and improve quality of life.

DR. KELLY noted that in the Lower 48 it is oftentimes easy when receiving these calls to request the patient be sent to the emergency room and the doctor being consulted will see the patient there, whereas in Alaska that could mean a boat or snow machine ride followed by a plane ride. He stated that some of his colleagues at the institute see a lot of potential liability in providing care for someone that the doctor being consulted cannot see or touch but is trying to help as best as possible, and an added challenge is that this could be at 2:00 a.m. He said the simplest and easiest way would be to ask for transfer of the patient, but this may not be the best thing for the patient, so this bill would allow for the doctors being consulted to relax and use their brains and skillsets to help other providers and doctors and their patients in their local space to get the best care. Sometimes the best care may mean transferring into Anchorage, he continued, but sometimes it may mean keeping patients where they are at. He advised that in Alaska there is currently a transfer of the "old school" of doctors who understand the remote way of life in Alaska to new practicing doctors who are very fearful of litigation. The bill would reduce that barrier so the institute's doctors could continue to help give the outstanding care that has been given

over the last 30 years in Alaska. He concluded by expressing his support for CSSB 65(JUD).

[5:02:52 PM](#)

REPRESENTATIVE KURKA stated that it looks like a lot of new language is being added to statute regarding who "duty of care" would apply to. He asked whether this is already defined elsewhere in statute or regulation.

SENATOR KIEHL replied that if a definition of what constituted a "duty of care" was had in Alaska's statutes it would be the preferable drafting approach. But, he explained, the concept of a "duty of care" is a common law concept built through hundreds of years of precedent in Western law; the Minnesota Supreme Court case put things into an upset situation by creating a very different standard. While Alaska's courts are in no way bound by Minnesota's courts, he continued, various states look to one another and so this bill would protect Alaska's medical care system and the curbside consults that are an important part of it. The text in the bill is an attempt to capture everything that could be thought of where there really is a duty, an obligation, a doctor-patient relationship, or a remuneration relationship, he stated. The bill does not apply this liability exemption to any place that would commonly be understood for there to be a duty of the health care provider to the patient.

REPRESENTATIVE KURKA noted that Alaska currently has liability for doctors who do malpractice. He said it seems that there should be something beyond precedent of case law in terms of an establishment of what constitutes a doctor's responsibility and who is responsible when tending a patient.

[5:06:10 PM](#)

PAM VENTGEN, Executive Director, Alaska State Medical Association (ASMA), responded that ASMA supports the bill. She noted that the bill applies to other specialists in addition to cardiologists. She explained that the duty of care has been understood for centuries and it is part of the practice of medicine. She said the bill's language was carefully crafted to support what has been happening without the protections in the bill.

[5:07:07 PM](#)

REPRESENTATIVE PRAX said he is concerned that by stating something it will be allowing something else, given the way Alaska's laws are written. He asked whether plaintiff's attorneys have been consulted regarding how this type of attorney might look at it.

SENATOR KIEHL confirmed that conversations have been had with personal injury attorneys in Alaska. He related that their concerns center around the precise language that prevents "the empty chair," which is what he described in not reducing the treating health care provider's liability by virtue of having gotten advice from someone whom the bill would not subject to liability. He allowed that conversation is ongoing about whether this needs a fine-tune adjustment. In terms of the broader issue, he continued, the state of the law today is that if [a provider] doesn't have a doctor-patient relationship [the provider] is not understood to have a duty of care, which is why the Minnesota Supreme Court's decision was such an upending event. Regarding doing a harm, Senator Kiehl related that several medical professionals have been worked with and a situation of harm has not yet been identified, but he would be amenable if a situation presents itself.

[5:10:15 PM](#)

REPRESENTATIVE PRAX recalled one of the previous witnesses stating that he got up to 20 calls in a 24-hour period. He inquired whether it could be argued that part of that person's job is making that many consultations in a day is to provide consultations.

SENATOR KIEHL replied that he doesn't think so because these are uncompensated calls. It is a service that medical professionals are providing to one another, he stated, and they are under no legal obligation, nor would this bill create a legal obligation, to take those calls. He said the only goal, and he believes the only effect, of CSSB 65(JUD) is to free them up to continue to do so when they choose to do so.

[5:11:31 PM](#)

REPRESENTATIVE SPOHNHOLZ surmised CSSB 65(JUD) would provide support by protecting the provider-to-provider relationship and would not create something more than that.

SENATOR KIEHL agreed.

5:12:44 PM

CO-CHAIR SNYDER asked whether there is precedence for other occupations where they would be held liable; for example, if an electrician called another electrician about what to do in a special circumstance.

SENATOR KIEHL responded that none come to mind.

5:13:47 PM

REPRESENTATIVE SPOHNHOLZ posited that one thing distinct about this scenario from other scenarios of one professional consulting another professional is that there is time sensitivity to a health care decision. An answer to a health care malady is needed quickly and it is desired to make sure that the person who is picking up the call on the other end is going to be comfortable. It is a sad state of affairs, she opined, that there is a need to create this protection for something that isn't described anywhere because there is no duty of care. However, if providers are saying that they feel this concern, there is merit to addressing it; the letters of support for it are broad in the health care community. She related that a physical therapist has suggested adding physical therapists. She asked whether this has been discussed in previous committees.

SENATOR KIEHL answered that there have been conversations about other disciplines within the medical field with curbside consults. He advised that it is important to be very precise and specific when granting a shield from liability, specifically because of the risk of unintended consequence. So, he said, the list of providers in the bill was tailored toward the greatest need for these curbside consults and with an eye toward some of the broader physical health scopes of practice. Each professional has a scope of practice that allows them to independently evaluate the advice they are given, he continued. The treating health care professional remains entirely liable to be sued and held responsible in court. That is why, for example, registered nurses (RNs) are not on the list. When a nurse communicates with a doctor there is not a parallel scope of practice, scope of training, and that is why the bill is as narrowly tailored as it is.

REPRESENTATIVE SPOHNHOLZ pointed out that a [health care provider] might consult with a physical therapist to find out

whether something is treatable via physical therapy as opposed to a higher level of intervention such as surgery.

SENATOR KIEHL offered his appreciation to committee members for their consideration and questions about CSSB 65(JUD).

[5:19:37 PM](#)

CO-CHAIR SNYDER opened public testimony on CSSB 65(JUD). She closed public testimony after ascertaining no one wished to testify.

[CO-CHAIR SNYDER held over CSSB 65(JUD).]

[5:20:11 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Health and Social Services Standing Committee meeting was adjourned at 5:20 p.m.